

UNITED STATES DISTRICT COURT  
FOR THE SOUTHERN DISTRICT OF OHIO  
WESTERN DIVISION AT DAYTON

UNITED STATES OF AMERICA : CASE NO. 3:21-CR-118 (MJN)  
 :  
Plaintiff, : GOVERNMENT'S MOTION TO  
 : DISMISS THE INFORMATION  
vs. :  
 :  
GREGORY J. CAIN :  
 :  
Defendant :  
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Pursuant to the provisions of Rule 48(a) of the Federal Rules of Criminal Procedure, plaintiff United States of America, by and through its counsel of record, the United States Attorney's Office for the Southern District of Ohio, hereby moves to dismiss the Information against the defendant in this matter. This motion is based upon the attached memorandum of points and authorities, the files and records in this case, and such evidence or argument as may be presented at any hearing on this matter.

DATED: August 15, 2022

Respectfully submitted,

KENNETH L. PARKER  
United States Attorney

s/Amy M. Smith  
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Attorney for Plaintiff  
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**MEMORANDUM OF POINTS AND AUTHORITIES**

Federal Rule of Criminal Procedure 48(a) provides that “the government may, with leave of court, dismiss an indictment, information, or complaint.” Fed. R. Crim. Proc. 48(a). “Separation-of-powers concerns generally require a district court to defer to the government’s decision to seek a dismissal of a criminal charge because a denial of the motion would represent an intrusion upon prosecutorial prerogative.” United States v. Gonzalez, 58 F.3d 459, 462 (9th Cir. 1995). Phrased differently, “the decision to dismiss [a complaint] implicates concerns that the Executive is uniquely suited to evaluate, and a district court should be reluctant to deny its request.” Id.; see also United States v. Salinas, 693 F.2d 348, 352 (5th Cir. 1982) (“The Executive [Branch] remains the absolute judge of whether a prosecution should be initiated and the first and presumptively the best judge of whether a pending prosecution should be terminated. The exercise of its discretion with respect to the termination of pending prosecutions should not be judicially disturbed unless clearly contrary to manifest public interest.”).

Here, the United States elects to exercise its discretion to dismiss the Information and has proceeded to grand jury and obtained an Indictment in this matter, which has been assigned Case No. 3:22-cr-88. The United States will proceed forward on the Indictment in Case No. 3:22-cr-88.

DATED: August 15, 2022.

Respectfully submitted,

KENNETH L. PARKER  
United States Attorney

s/Amy M. Smith  
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**CERTIFICATE OF SERVICE**

I hereby certify that a copy of the foregoing Motion was served this 15<sup>th</sup> day of August 2022 via ECF, on all counsel of record.

s/Amy M. Smith

AMY M. SMITH (0081712)